
1994 Wis Eth Bd 3
DISQUALIFICATION; IMPROPER USE OF OFFICE; LEGISLATORS;
LOBBYING

The Ethics Board advises that the lobbying law does not pose an obstacle to an official's spouse's employment as a lobbyist. However, an official should avoid placing himself or herself in a position in which a conflict of interest may arise. In instances of occasional and infrequent conflicts, an official can avoid a violation of the Ethics Code by refraining from any official discussions or votes on matters on which the spouse's employer lobbies or has a demonstrated interest before the official's agency. An official should also refrain from extending any special access or assistance to his or her spouse or spouse's employer in agency matters. If conflicts are frequent and continuing, public policy may best be served by divesting either the private interest or the public responsibilities.

OEB94-3 (August 18, 1994)

Facts

[1] This opinion is based upon these understandings:

- a. You are a state public official.
- b. Your spouse has been offered a position as Director of Government Affairs at a registered lobbying principal.
- c. Part of your spouse's duties will include lobbying on behalf of the principal.

Questions

[2] The Ethics Board understands your questions to be:

What restrictions, if any, would laws administered by the Ethics Board place on you as a result of your spouse's proposed employment?

Discussion

[3] The question you have posed raises a number of considerations, including issues arising under Wisconsin's lobbying law, Ch. 13, subch. III, *Wisconsin Statutes*, and Ethics Code, Ch. 19, subch. III, *Wisconsin Statutes*.

[4] The lobbying law does not pose an impediment to your spouse's employment as a lobbyist. That law provides a specific exception that allows a lobbyist to provide items and services of pecuniary value to a relative of that individual and allows the receipt of anything of pecuniary value from

such lobbyist by that relative. §13.625(6), *Wisconsin Statutes*. Therefore, your deriving a financial benefit from your spouse's employment as a lobbyist is not prohibited. You should be careful, however, not to accept anything of pecuniary value offered to you by your spouse's employer unless another specific exception applies.

[5] There are several statutory provisions in the Ethics Code that may apply to restrict your participation in legislative matters in which your spouse's employer has an interest. Of particular importance are §§19.45(2), 19.45(3), and 19.46(1)(b), *Wisconsin Statutes*. Those sections provide:

19.45 Standards of conduct; state public officials. (2) No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit a state public official from using the title or prestige of his or her office to obtain contributions permitted and reported as required by ch. 11.

(3) No person may offer or give to a state public official, directly or indirectly, and no state public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the state public official. This subsection does not prohibit a state public official from engaging in outside employment.

19.46 Conflict of Interest Prohibited; Exception. (1) Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

[6] First, sections 19.45(2) and 19.46(1)(b), *Wisconsin Statutes*, direct you not to use your public office or position to obtain financial gain or anything of substantial value for yourself or your spouse or an organization with which you or your spouse is associated or to assist in the production of a substantial benefit for you, your spouse, or such organization. This provision requires that you not extend any special access or assistance to your spouse or your spouse's employer in agency matters or share confidential information that could be of help to your spouse's employer.

[7] Second, as a beneficiary of your spouse's contribution to your household's income, you should be able to demonstrate that your spouse's paid employ-

ment could not reasonably be expected to influence your official judgment or actions. §19.45(3). See 1993 Wis Eth Bd 4. Your household's receipt of income from an organization with a substantial and demonstrated interest in issues likely to be addressed by your agency could reasonably be expected to affect your official judgment and actions in a manner sympathetic to your spouse's employer. 1993 Wis Eth Bd 5. The test imposed by the statute is an objective one; the question is whether a reasonable person would expect that your spouse's employment would influence your official judgment on matters on which your spouse's employer lobbies or has a demonstrated interest. *Id.* To avoid this problem, you should refrain from exercising any official authority with respect to such matters.

[8] Finally, a public officer owes an undivided duty of loyalty to the public whom he or she serves.¹ Public policy favors a state public official's exercise of his or her official duties and an official should avoid placing himself or herself in a position in which the official must refrain from exercising official responsibilities because a conflict of interest might arise.² As a general matter, occasional and infrequent conflicts may be dealt with by the official's abstaining from participation in official matters, as required to avoid violating the Ethics Code. However, continuing and frequent conflicts might best be dealt with by divesting either the private interest or the public responsibilities.

Advice

[9] The Ethics Board advises that the lobbying law does not pose an obstacle to your spouse's employment as a lobbyist. However, you should avoid placing yourself in a position in which a conflict of interest may arise. In instances of occasional and infrequent conflicts, you can avoid a violation of the Ethics Code by refraining from any official discussions or votes on matters on which your spouse's employer lobbies or has a demonstrated interest before your agency. You should also refrain from extending any special access or assistance to your spouse or spouse's employer in agency matters. If conflicts are frequent and continuing, public policy may best be served by divesting either the private interest or the public responsibilities.

¹ 1993 Wis Eth Bd 04; 1992 Wis Eth Bd 33; 1992 Wis Eth Bd 32; 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

² *Id.*